

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

IAN M. DOTY,

Plaintiff

v.

C-1-11-424

COMMISSIONER OF THE
SOCIAL SECURITY ADMINISTRATION,

Defendant

This matter is before the Court upon the Report and Recommendation of the United States Magistrate Judge (doc. no. 4), plaintiff's objections (doc. no. 6), defendant's response (doc. no. 7) and plaintiff's response thereto (doc. no. 8). The Magistrate Judge concluded that this Court still lacks federal jurisdiction and therefore recommended that plaintiff's Complaint should be dismissed for lack of jurisdiction.

Plaintiff objects to the Judge's Report and Recommendation on the grounds that his findings are contrary to law. Plaintiff requests that this Court recognize that he has attempted in good faith to exhaust his administrative remedies. Plaintiff further seeks resumption of his

benefits while he is incarcerated and back pay for the months he did not receive benefits.

Defendant argues that plaintiff admits in his Complaint that he has not fully availed himself of the four-step administrative review process that is required to exhaust one's administrative remedies before filing a complaint in federal court. Furthermore, defendant argues there has been no final decision in this case by the Commissioner, as required by 42 U.S.C. § 405(g). In the absence of exhaustion of the administrative review process and a final decision by the Commissioner, this Court is without jurisdiction over plaintiff's complaint.

CONCLUSION

Upon a *de novo* review of the record, especially in light of plaintiff's objections, the Court finds that plaintiff's objections have either been adequately addressed and properly disposed of by the Judge or present no particularized arguments that warrant specific responses by this Court. The Court finds that the Magistrate Judge has accurately set forth the controlling principles of law and properly applied them to the particular facts of this case and agrees with the Judge.

Accordingly, the Court hereby ADOPTS AND INCORPORATES BY REFERENCE HEREIN the Report and Recommendation of the United States Magistrate Judge (doc. no. 4). Plaintiff's Complaint (doc. no. 3) is DISMISSED for lack of jurisdiction and this case is TERMINATED on the docket of this Court.

For the foregoing reasons, this Court CERTIFIES pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Order would not be taken in good faith. *See, McGore v. Wrigglesworth*, 114 F.3d 601 (6th Cir. 1997). The Court therefore DENIES plaintiff leave to proceed *in forma pauperis* in the United States Court of Appeals for the Sixth Circuit.

IT IS SO ORDERED.

s/Herman J. Weber
Herman J. Weber, Senior Judge
United States District Court